



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,619	06/18/2001	Robert Martin Wynalda JR.	1949-A-CIP	5116
45069	7590	04/20/2006	EXAMINER	
FRED ZOLLINGER III P.O. BOX 2368 NORTH CANTON, OH 44720			SIMONE, CATHERINE A	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/883,619

Applicant(s)

WYNALDA ET AL.

Examiner

Catherine Simone

Art Unit

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

ADVISORY ACTION

Response to Arguments

Applicant's arguments filed 4/7/06 have been fully considered but they are not persuasive.

Applicant argues “the indented V-shaped edges are both described in the written specification and depicted in the drawings. Although the exact words “indented into the page” are not used in the written specification, the drawings and written specification support the use of these words in the claims”. However, it is to be pointed out that the recitation “the V-shaped edge being indented into the page” in claim 7 is not clearly described in the written specification and is not clearly depicted in the drawings. Therefore, the recitation is still deemed new matter.

Applicant then argues “Although the word “non-pivotably” is not used in the written specification, the drawings and written specification support the use of this word in the claims. There is no requirement that the exact words of the claims be found in the written description”. However, it is to be pointed out that the recitation “non-pivotably” is not found in the written specification and it is not clearly described in the written specification nor is it clearly described in the drawings. Therefore, the recitation “non-pivotably” in claims 27 and 35 is still deemed new matter.

Applicant further argues “Page 6, lines 21-25 disclose that the Brinkhurst ‘452 container may have multiple pages (a series of pages 13) that are either hinged together (thus pivotably connected directly together) or are each individually connected to the spine (thus pivotably moveable with respect to each other). Nothing in Brinkhurst discloses the use of page halves to

form the pages (13). Each page appears to be of a unitary construction”. However, it is to be pointed out that Brinkhurst ‘452 clearly teaches page halves (pages 13) separately formed and non-pivotably joined together (see page 6, lines 21-25). Brinkhurst ‘452 discloses the multiple pages 13 may be arranged side-by-side and separately connected to the spine (see page 6, lines 23-24) and therefore, do not have to be pivotably connected together.

Applicant then argues “The V-shaped gaps cited by the Examiner are formed between adjacent signatures 12 – not on the edges of the pages. Each page of McKowen’s structure thus does not have an edge that is V-shaped in cross section and indented into the page as required by the claim....The Examiner has not explained how the signatures 12 of McKowen provide the V-shaped edge being indented into the page to define the pocket for the adhesive. Nothing in McKowen is indented to a page and the adhesive pocket is disposed beside the outer page of the signature – not indented into the page of a page of the signature.” However, it is to be pointed out that the pages 12 in Figure 1 of McKowen are clearly shown to have a V-shaped edge being indented into the page to define a pocket for the adhesive 18. Again looking at Figure 1 of McKowen, the V-shaped cross-section, which defines the pocket for the adhesive 18, is clearly shown on the edge of the pages 12 and is clearly indented into the pages 12. Thus, the claims fail to patentably define over the prior art as applied above.

Furthermore, Applicant argues “the combination of Brinkhurst (a solid page) and Gelardi (literature card disposed against outer surface of page) does not render the claim obvious. The Examiner has cited elements 3 and 63 to disclose the Gelardi page halves that are disposed on either side of the Gelardi literature card. The Applicant interprets Gelardi’s elements 3 and 63 as pages – not page halves. Despite the interpretation, the claim requires the page halves to be non-

Art Unit: 1772

pivotably joined together to form the page within which the card is disposed. Gelardi's elements 3 and 63 do not meet these limitations". However, as pointed out previously Brinkhurst clearly teaches pages halves non-pivotably joined together to form a page as claimed in the present invention. Gelardi was merely cited for suggesting that it is old and well known in the art to have a literature card disposed within a page between page halves (elements 3 and 63) and it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided a literature card within the page between the page halves 13 in Brinkhurst as suggested by Gelardi in order to form a storage container for holding items of recorded media. One skilled in the art would clearly be able to modify the page halves in Brinkhurst to have a literature card disposed between them as suggested by Gelardi, if so desired. Thus, the claims fail to patentably define over the prior art as applied above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (571)272-1501. The examiner can normally be reached on 9:30-6:00.

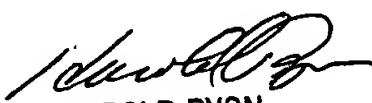
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Catherine A. Simone
Examiner
Art Unit 1772
April 17, 2006



HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

4/18/06